REMARKS/ARGUMENTS

Claims 28-40 are pending. (Claims 1-27 were canceled, and claims 41-50 were withdrawn as non-elected subject matter.)

Amendments to the Claims

Claim 28 is amended to recite a hydrogen peroxide content from about 0.01 to 1.5 weight percent. This amendment is supported by the specification at, *inter alia*, paragraph [0032] and Examples 2 and 4 of the published application US 2004/0091548.

Claim 41, which is directed to a method of treatment, has been amended to incorporate the limitations of composition claim 28, thus facilitating rejoinder.

Elections/Restrictions

Claims 41-50 are withdrawn as directed to non-elected subject matter. Applicants expressly reserve the right to file one or more continuation and/or divisional application(s) to the non-elected subject matter. Particularly in view of the amendment to claim 41, Applicants note that the non-elected method claims are eligible for rejoinder upon allowance of the composition claims. *See* MPEP 806.05(h).

Double Patenting Rejections

Claims 28-40 were rejected for non-statutory obviousness-type double patenting in view of related applications. Applicants will submit a terminal disclaimer over the related applications (US 6,673,374; US 7,018,660; US 6,383,523; US 6,296,880; and US 6,071,541), when all other rejections and/or objections are overcome.

Anticipation Rejection under 35 U.S.C. § 102

As the Examiner is aware, to establish anticipation under 35 U.S.C. § 102, a prior art reference must disclose each and every limitation either expressly or inherently in a single prior art reference. *See, e.g., Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F. 3d 1354, 1360 (Fed. Cir. 1998); *Standard Havens Prods., Inc. v. Gencor Indus. Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991); *Jamesbury Corp. v. Litton Indus. Products*, 756 F. 2d 1556 (Fed. Cir. 1985);

American Hospital Supply v. Travenol Labs., 745 F.2d 1 (Fed. Cir. 1984). There must be no difference between the claimed invention and the reference disclosure as viewed by one of ordinary skill in the art. *See, e.g., Scripps Clinic & Research Fdn. v. Genentech*, 927 F.2d 1565, 1576 (Fed. Cir. 1991); *Carella v. Starlight Archery and Proline Co.*, 804 F.2d 135, 138 (Fed. Cir. 1986); *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). Put another way, "[a] claim is anticipated and therefore invalid only when a single prior art reference discloses *each and every limitation of a claim.*" *Glaxo Inc. v. Novapharm Ltd.*, 52 F.3d 1043, 1047, cert. denied, 116 S. Ct. 516 (1995) (emphasis added) (citations omitted). In addition, to anticipate, the reference must also enable one of skill in the art to make and use the claimed invention. *In re Donohue*, 766 F.2d, 532, 533 (Fed. Cir. 1985).

1. Oliver fails to disclose a composition including both a hydrophilic moisturizing agent and a hydrophobic moisturizing agent.

Claims 28, 30, 32, 33-36, and 40 were rejected as anticipated by U.S. 5,869,062 ("Oliver"). The Office Action incorrectly asserts that Oliver discloses a composition comprising both a hydrophilic moisturizing agent and a hydrophobic moisturizing agent. However, Oliver only discloses a composition using "glycerin or propylene glycol" as a diluent. Col. 2, line 50 (emphasis added). Oliver's only exemplary composition (shown in the table at column 3) contains only hydrophobic moisturizing agents: glycerin and tocopherol; it does not contain propylene glycol nor any other hydrophilic moisturizing agent. Because Oliver fails to teach the claimed composition including both a hydrophilic moisturizing agent and a hydrophobic moisturizing agent, Oliver fails to anticipate the claims.

2. Oliver fails to disclose a composition containing a low, yet effective hydrogen peroxide content.

Claim 28 as amended also recites that the hydrogen peroxide content is from about 0.01 to 1.5 percent by weight. In contrast, Oliver teaches a hydrogen peroxide content of "between about 3 and 8 percent." Col. 3, lines 5-6. Moreover, it would not even have been obvious that one could drastically reduce the amount of hydrogen peroxide to only 0.01 to 1.5 weight percent and still achieve high efficacy as demonstrated by the claimed composition and accompanying Examples.

In view of these arguments and amendments, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection.

Obviousness Rejections under 35 U.S.C.§ 103

As the Examiner is aware, to render claims obvious under 35 U.S.C. § 103(a), the prior art must disclose or suggest every limitation of the claimed invention and provide the person of skill in the art with a reasonable expectation that the invention will work for its intended purpose. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739-41 (2007). Applicants respectfully submit that the references cited by the Examiner do not render obvious the claims, as amended, because the references do not disclose or suggest every limitation recited in the claims, as amended, or provide a reasonable expectation that the invention will work for its intended purpose.

Claims 28-40 were rejected as obvious in view of Oliver, U.S. 5,605,694 ("Nadaud"), U.S. 5,569,651 ("Garrison") , and U.S. 6,335,388 ("Fotinos"). Only Oliver relates at all to a hydrogen peroxide composition, and even so, it does not teach or suggest the low concentration of hydrogen peroxide as presently claimed.

As described above, Oliver does not teach or suggest a composition having a hydrogen peroxide content of only 0.01 to 1.5% by weight.

The secondary references fail to make up for this deficiency. Not one of the secondary references includes any mention of hydrogen peroxide at all, much less a low, yet effective amount of hydrogen peroxide. Because the cited references do not teach or suggest the claimed element of a low hydrogen peroxide concentration, Applicants respectfully submit that a *prima facie* case of obviousness has not been established.

In view of these arguments and amendments, Applicants respectfully request reconsideration and withdrawal of the obviousness rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 202-481-9900.

Respectfully submitted,

10/27/08

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